



COPYRIGHT ROYALTY TRIBUNAL
UNITED STATES OF AMERICA

1111 20th Street, N.W.
Washington, D.C. 20036
(202) 653-5175

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April 7, 1980

Harris E. Tulchin, Esquire
Attorney for American Society
of Music Arrangers
1517 Yale Street
Santa Monica, CA 90404


Dear Mr. Tulchin:

This is to inform you that the Copyright Royalty Tribunal denies the claim of the American Society of Music Arrangers for a separate mechanical royalty to be paid to the arranger of a phonorecord.

The Tribunal interprets 17 U.S.C. § 115 as providing that the compulsory license royalty is to be paid only to the copyright owner of the original musical composition. Congress did not grant the Tribunal the statutory authority to create a new compulsory license. Rather the Congress, 17 U.S.C. § 801(b)(1), expressly limited the Tribunal to the adjustment of reasonable copyright royalty rates as provided in Section 115.

Accordingly, the Tribunal rejects the proposal of the American Society of Music Arrangers as outlined by Mr. Eddy L. Manson in his letter of January 31, 1980.

Sincerely,


Mary Lou Burg
Chairman

cc: Stanley Gortikov, RIAA
Leonard Feist, NMPA
Alvin Deutsch, AGAC

James E. Shields
8425 So. Bennett St.
Chicago Ill., 60617

April 10, 80

The Copyright Royalty Tribunal
1111 20th Street, NW
Washington D.C. 20036

Dear Sirs:

As far as I've read and can understand I agree that songwriters should receive a higher mechanical rate (Royalty) per song ,per recording.

Included with my letter is a copy of an article from songwriter magazine (June 1979) written by Doug Thiele. Who is one of the board of directors at Songwriters Resources & Services . I agree with most of the article except for the sound recording tape tax issue. I feel it's a narrow point of view for the government to level a tax on a product to deter only one of it's uses ; recording music off the public air waves. I'm sure vidio and audio tape recording done by non, or semi-professionals covers more areas than just off the air taping. I'd guess in the case of film students , vidio tape cassettes with their lower cost wide range of equipment and ease of operation must help many students improve on their technique. And it would be the same for songwriters and music students. If a poll was taken of songwriters you'd find most own recording equipment and that they use their equipment for development of their craft for the most part. If you look at the advances in

broadcast and reproduction technology it would seem like Alan Sierotys' 5% tax on blank recording tape is missing the point.

As it implies in Thieles' article more people are taping music off the air, or taping records their friends lend them. Why shouldn't they, over the last ten years cassette tape recorders have improved and are designed for F.M. radio taping in particular. With features such as Dolby-B circuits that reduce noise on F.M., no matter if your taping or not. And LPX filters that cut off frequencies in the area of 18,000 Hz, to achieve better sound for the home recordist.

I don't believe raising the price of recording tape through tax will make the public buy more records. But I'd like to know what the Copyright Tribunals' view of this matter is.

James E. Shields

James E. Shields



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Price \$1.50/\$14
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SORS Forum

"We Have a Chance to Influence the Future"

by Doug Thiele

Songwriters have never had it easy; they've always had to struggle for recognition and profit from their creations against an unsympathetic and, at times, avaricious industry. A few decades ago, pitching your tunes might have meant treading the polished floors of the Brill Building and knocking on publishers' doors who, if they took your song, would make you feel lucky to get a penny for each piano sheet sold and twenty-five percent of recording or other profit, if you saw any profit at all. Reversion clauses were just about unheard-of, and though there were some publishers and others who tried to nurture talented writers, many were basically in the

business for a quick buck.

Before 1909, the situation was out of hand. There was virtually no protection for a songwriter's material, and those with established businesses were grabbing every piece of music they could call theirs exclusively, whether the writer was living or not. As a matter of fact, a big reason why the right of "first license" was established (one of your writer's rights in your material is to decide who will record your song *first*, after which anyone can record it assuming they pay you your royalties) was that a piano roll manufacturer was trying to claim ownership of any song the company put on a roll, thereby cornering the market. The 1909 copyright law said that once a song was recorded once, anyone else had the right to record it, thereby averting that monopoly.

The copyright lawmakers tried to take the songwriter into account. They established important rights and set rates at which songwriters and publishers should be paid back for recordings. Even though that mechanical rate of two cents per song was a ceiling, it established some guidelines.

Still, songwriters seemed always to get the last piece of the pie, and a small one at that. But more distressing, record company profits and industry growth patterns soon began to increase dramatically while the songwriter seemed left in some time capsule, frozen at a point where mechanical rates were depressingly low. There was no organization which could advocate for the songwriter... no nationwide songwriter organization, and no internal remedy for songwriter complaints, no matter how justified. More depressing, countries outside the United States were paying more attention to songwriters, and establishing tighter control over some companies' huge profits, and setting a much higher mechanical rate.

The new copyright law, effective in 1978, had to address itself to many problems. It made decisions on some, like establishing a higher mechanical rate of 2½ cents per song, or ½ cent per minute, whichever is more, but ignoring thornier issues like performers receiving performance royalties. As far as mechanicals are concerned, it means that instead of receiving two cents royalty each time your song is sold on a record or tape, you now receive ¾ cent more.

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Not an impressive raise in pay in almost 70 years.

But when you consider that this $\frac{3}{4}$ cent raise in pay is the *ceiling* . . . that publishers can and do issue mechanical licenses to record companies for less than $2\frac{3}{4}$ cents to induce the company to record the song . . . it's clear that the cost of living has long ago stripped the songwriter of any hedge against inflation.

The situation is better in, for instance, England, where there is a society which monitors mechanical licensing, the Mechanical Copyright Protection Society (MCPS). The mechanical rate is set at $6\frac{1}{4}$ percent of each record *pressed* (the United States rate is set for each record sold), fees are payable when the record is made, and the indication is that MCPS enforces its contracts.

But amid all this distressing news is a ray of sunshine; the new copyright law contains a section which establishes a Copyright Tribunal, a panel of experts in the field, who are to meet at least once every 10 years with the purpose of reviewing, among other things, mechanical rates. This means that with a unified effort by songwriters, there is a remedy possible in the mechanical rate issue, and other issues.

The tribunal will meet in 1980, and there are two major issues known to be on the agenda: the first is the issue of increasing the mechanical rate. There seems to be a predictable division between songwriters and publishers who want a higher rate, and record companies and other like-concerns which would keep the rate the same (at most). There may be suggestions to the tribunal to consider a percentage rate for

mechanicals as a hedge against inflation, as opposed to a rate set at so many cents.

The other issue is also one which should concern you; it is the issue of home taping. The issue seems simple enough, though the remedy is very problematical. Most people who buy blank tape seem to use it to record albums or other prerecorded material. Of course, each time this is done, songwriters lose royalties. Other people are already addressing themselves to this issue: Alan Sieroty, a California state senator, has introduced a bill which would impose a 5% tax on blank tape, the proceeds of which would then be used to finance free public performances. The precedent has been set in Germany, where there is a duty tax on recording equipment. There is also the well-publicized suit in progress between MCA-Disney and Sony over Sony's Betamax videotaping machine, which may have ramifications in the audio tape area.

The point of this is that while you and I have been writing our songs and learning our craft, issues important to all serious songwriters have been discussed . . . decisions have been made . . . rates have been set. But we now have a chance to influence the future. We can affect our future through the Copyright Tribunal.

The American Guild of Authors and Composers (AGAC) has very recently commissioned a consulting firm to do an independent study (never before done, surprisingly enough, in America) of the American songwriter, which will be presented to the Copyright Tribunal in connection with mechanical rates. Songwriters Resources and Services has been planning the distribution of a songwriter petition nationwide which will call for an increase in mechanical royalties. Other songwriter-oriented plans are in the works, and it's clear that songwriters *will* be heard from in 1980.

But there's no need to wait for these projects alone, important though they are. You can affect your future and help other songwriters as well by sending your opinions to the Copyright Royalty Tribunal, 1111 20th St. NW, Washington, D.C. 20036. If you believe that the mechanical rate should be increased, say so in a letter and send it to the Tribunal.

Billboard once stated that there are 24,000,000 songwriters in this country . . . one in every six households. So, if it's true that there's strength in numbers, we should be very strong indeed.